

**REMARKS**

In the Official Action mailed 28 May 2003, the Examiner reviewed claims 1-69. Claims 55-69 were withdrawn from consideration due to a requirement for restriction. The Examiner rejected claims 1, 8-13 and 20 under 35 USC 102(e); rejected 4-7 and 14-19 under 35 USC 103(a); rejected claims 2 and 3 under 35 USC 103(a); rejected claims 21, 27-31 and 37 under 35 USC 103(a); rejected claims 22-26, 33-36, 38, 40, 43 and 45-54 under 35 USC 103(a); rejected claim 39 under 35 USC 103(a); rejected claims 41 and 44 under 35 USC 103(a); and rejected claim 42 under 35 USC 103(a).

Applicant cancels claims 55-69. Claims 1-54 remain pending. Each of the Examiner's rejections is respectfully traversed below, and reconsideration is requested.

Requirement for Restriction

The Examiner required restriction among four groups of claims. Applicant provisionally elected group I, and hereby confirms that election. Claims 55-69 which correspond to the groups II - IV, are canceled herein.

Rejection of Claims 1, 8-13 and 20 under 35 USC 102(e)

The Examiner rejected claims 1, 8-13 and 20 under 35 USC 102(e) as anticipated by Walker et al. (U.S. Patent No. 6418415 B1). Applicant respectfully requests reconsideration.

Independent claim 1 includes the limitation:

*"providing an interface by which a first party identifies attributes of a particular service to be shared with a second party and to be provisioned by the service provider;"*

The Examiner argues that Walker et al. teaches this limitation in its abstract, and at column 4, lines 27-30, 41-43 and 46-54. However, the cited text in Walker et al. does not describe a "service to be shared with a second party and to be provisioned by the service provider." Walker et al. does disclose a system in which generic "services" may be purchased collectively under its so-called conditional purchase offer management system. However, no services are identified that are "to be shared with a second party and to be provisioned by the service provider." At column 4, lines 43-44, travel or

insurance services are mentioned in the Walker et al. reference as representative of the types of service that might be purchased using the aggregate conditional purchase offer system. However, there is no further discussion of the services being provided, how they are provisioned, nor how they might be shared with a second party.

Independent claim 1 also includes limitations:

*"offering participation in the particular service to the second party via an interface by which the second party may signal acceptance of the particular service; and  
if acceptance by the second party of the particular service is signaled, then executing a process to provision the particular service for the first party and the second party."*

The just quoted limitations of independent claim 1 do not appear in the reference cited by the Examiner. The Examiner cites column 5, lines 19-34 as corresponding to the "offering" step. However, the cited text in Walker et al. only describes the manner in which conditional purchase offers are aggregated for the purchase of goods or services. It does not describe offering participation in a particular service to be shared as required by claim 1.

The Examiner cites Figure 14B, and column 15, lines 53-65 of Walker et al. as corresponding to the step of "if acceptance by the second party of the particular service is signaled, then executing a process to provision..." However, the aggregate conditional purchase offer system of Walker et al. does not provision a service in response to acceptance by a second party. In the Walker et al. system, a group of parties agree on the terms of a purchase, and submit an aggregated offer to a service provider. The seller of the services in Walker et al. then accepts or rejects the aggregated offer for the group. The system of Walker et al. does not address the provisioning of services as required in claim 1.

In Figure 14B of Walker et al. cited by the Examiner, there is no provisioning of services discussed. Rather, the process ends with sending a confirmation (block 1470) of the purchase to the buyers.

At column 15, lines 53-65, the process described in Walker et al., again, ends at confirmation of the purchase. Thus, Walker et al. provides a system that facilitates

aggregated purchase agreements, but not the provisioning of a particular service. The Walker et al system contemplates a seller with goods or services for sale, and a group of buyers that prepare an aggregate purchase offer. The present invention on the other hand, as recited in Claim 1, provides for first and second parties to define a service that they intend to share, and communicate the attributes of that service to a service provider who is responsible for delivering the service. The claim then requires executing a process to provision a particular service to be shared between the first and second parties.

"Provisioning" in the context of the present application takes its ordinary meaning of providing the desired service, including in some contexts any preparatory steps necessary in establishing the service. In connection with the provisioning of communication services, one example of the provisioning involves the update of software configurations of the platforms used by the parties, that are connected to a metropolitan or wide area network, so that the agreed upon logical connection for data flow between the platforms is actually established across the network.

The sending of confirmations of agreement by Walker et al. is not "provisioning." The "provisioning" by providing of the goods or services that the purchase agreement relates to is simply not discussed in Walker et al.

Regarding claim 8, the Examiner cites the abstract, and column 4, lines 27-30, 41-43 and 46-59, which are the same portions of Walker et al. as applied to the step of "providing an interface..." in claim 1. However, Walker et al. does not relate to "a particular service to be shared with a second party and to be provisioned by the service provider." Accordingly, Walker et al. does not teach a step required in claim 8 of sending the attributes of the particular service to a service provider.

Claim 9 extends claim 1 to an environment in which the particular service is shared by more than two parties. Claim 9 distinguishes over the Walker et al. reference for at least the same reasons as claim 1.

Likewise, claims 10-13, distinguish over Walker et al. for at least the same reasons as the independent claim 1.

Claim 20 relates to the process by which information is shared between the first and second parties that share the particular service, and that information is used independent of the service provider. One example of this process is described at page 34,

lines 9-12, and referred to as an "opaque information pass through mechanism." The Examiner cites the abstract of Walker et al. as teaching this process. However, as mentioned above, there is no discussion in Walker et al. related to services to be shared, nor related to communication among the parties that will be sharing such services.

Accordingly, applicant respectfully requests reconsideration of the rejection of claims 1, 8-13 and 20 in view of the foregoing comments.

Rejection of Claims 4-7 and 14-19 under 35 USC 103(a)

The Examiner rejected claims 4-7 and 14-19 under 35 USC 103(a) as unpatentable over Walker et al. in view of various instances of "Official Notice." Applicant respectfully objects to the Examiner's "Official Notice" as plainly based on hindsight, applying knowledge of the present claims. Furthermore, Applicant requests that the Examiner provide evidence to support the "Official Notice" that can be fairly applied in the context of the present claims.

Applicant points out that claims 4-7 and 14-19 depend from claim 1, and are believed allowable for at least the same reasons as claim 1, regardless of the allegedly well known prior art.

Regarding claim 4, the Examiner takes "Official Notice" that it would be obvious to extend Walker et al. to the communication services as recited in claim 4. However, it is unclear exactly what feature of the prior art that the Examiner considers to be applicable to claim 4. The Examiner merely concludes that the addition of the limitation in claim 4, that the services to be provisioned according to the process of claim 1 are communication services, would have been obvious. This is illegal reliance on hindsight, without identification of any particular prior art that would support the conclusion. Accordingly, clarification or corroboration of the Examiner's Official Notice is respectfully requested.

Furthermore, as discussed above, Walker et al. describes a system facilitating agreements to provide services. It has nothing to do with provisioning of services by a service provider to be shared between parties. The only services mentioned in Walker et al. are airline travel and insurance services. There is no discussion in Walker et al. about how these services might be shared between individuals. The communication services

provided by the service provider, as recited in claim 4, are shared by the establishment of the communication channel using communication resources of the service provider from one party to the other. Walker et al. is simply unrelated to the process as recited claim 4.

The Examiner also rejected claim 5, taking "Official Notice that creating a logical instance for the purpose of defining a class is old and well known in the programming art." However, the Examiner does not discuss how this can be applied in the context of claim 1 where the logical instance relates to a particular service to be provided by a service provider and shared between the first and second parties. Furthermore, the Examiner does not provide support for the other limitations in claim 1, which are missing from Walker et al.

With regard to claims 6 and 7, the Examiner states that "creating a logical connection to a data item is old and well-known." Again, however, the Examiner does not provide support for the limitations of claim 1 not found in Walker et al., that the present invention is addressed to provisioning services to be shared between parties and provided by a service provider.

Claim 14 describes the electronic document of claim 13 as one compliant with XML. Claim 14 is allowable for at least the same reasons as its base claims, and because of the unique combination it recites.

Claims 15-19 recite various services to be shared according to the present invention. As argued above, Walker et al. does not describe the services recited in claims 15-19, nor any service that is shared between the parties and provided by a service provider.

Accordingly, the Examiner has not presented a *prima facie* case of unpatentability as to any of claims 4-7 and 14-19, for the reasons discussed above with respect to claim 1, and for the reasons just presented. Therefore, reconsideration of the rejection of such claims is respectfully requested.

#### Rejection of Claims 2 and 3 under 35 USC 103(a)

The Examiner rejected claims 2 and 3 under 35 USC 103(a) as unpatentable over Walker et al. in view of Shing et al. (U.S. Patent No. 5,495,610). As argued above, the Examiner's position that Walker et al. teaches all of the limitations of claim 1 is believed

Application No. 09/634,566

CMET 1001-2

mistaken. Accordingly, claims 2 and 3 are believed allowable for least the same reasons as claim 1.

Furthermore, the Examiner admits that Walker et al. does not teach the steps recited in claim 2 of "establishing a connection between the service provider and the first party...", and "establishing a connection between the service provider and the second party...." The Examiner relies on Shing et al. to teach these limitations.

Shing et al. describes a software distribution system for distributing software programs. However, Shing et al. has nothing to do with the provisioning of particular services to be shared between parties.

The Examiner cites column 7, lines 26-34 of Shing et al. This paragraph in Shing et al. describes attributes of nodes in the software distribution system. Even if these attributes, standing alone, would qualify as an "account" under the claims of the present invention, there is no discussion in Shing et al. nor in Walker et al., of how first and second parties establish a connection with the service provider and an account that relates to delivery of services to be shared, as recited in the present claims.

Claim 3 depends from claim 2 and includes a verifying step. Clearly, there is no structure in Shing et al. nor in Walker et al. that corresponds to the step recited in claim 3.

Accordingly, reconsideration of the rejection of claims 2 and 3 is respectfully requested.

Rejection of Claims 21, 27-31 and 37 under 35 USC 103(a)

The Examiner rejected claims 21, 27-31 and 37 under 35 USC 103(a) as unpatentable over Walker et al. in view of Teng et al. (U.S. Patent No. 6,094,679) (The Examiner mistakenly referred to (U.S. Patent No. 5,495,610) as Teng et al. in this part of the Official Action. The '610 Patent is Shing et al.)

Concerning claim 21, the Examiner relies on Teng et al. to teach a system for distributing software, in which clients request downloads by sending an HTTP formatted request carrying information about the client machine. The Examiner is suggesting that Teng et al. teaches the first step of claim 21, by suggesting that the download server may store information about its client that corresponds with the "parameters of respective service provider accounts." Applicant asserts that the Examiner is mistaken concerning

the teaching of Walker et al. and Teng et al. The combination of references applied does not yield the limitations in claim 21, including as discussed in detail above in connection with respect to claim 1, that the parties interact to share a service that is provisioned by the service provider using the parameters of respective service provider accounts. Teng et al. does not overcome the inadequacy of Walker et al. in this regard, because no software described in Teng et al. is shared by the clients, nor does it relate to establishing a shared service provided by the download server nor any other service provider. Rather, Teng et al. is simply about the distribution of generic software that Teng et al. describes as "preferably hardware related software, such as printer driver/configuration files relating to a printer attached to a network server." See, column 3, lines 6-8 of Teng et al.

With regard to claims 27-31, Applicant points out that such claims are similar to claims 8-13 discussed above, and are believed allowable for at least the same reasons, and for the same reasons as their base claim 21.

With regard to claim 37, Applicant points out that claim 37 is similar to claim 20 discussed above, and is believed allowable for at least the same reasons as claim 20, and for the same reasons as its base claim 21.

Accordingly, reconsideration of the rejection of claims 21, 27-31 and 37 is respectfully requested.

Rejection of Claims 22-26, 33-36, 38, 40, 43 and 45-54 under 35 USC 103(a)

The Examiner rejected claims 22-26, 33-36, 38, 40, 43 and 45-54 under 35 USC 103(a) as unpatentable over Walker et al. in view of Teng et al., and Official Notice.

Claims 22-26 of and 33-36 depend from claim 21 which is discussed above. It is submitted that such claims are allowable for at least the same reasons as claim 21, and because of unique features recited in such claims.

Applicant has objected to the "Official Notice" above, and submits that the Examiner's reliance on "Official Notice" is based on hindsight applying knowledge of the present claims. The Examiner does not provide any motivation for application of the allegedly well-known programming techniques of "creating a logical instance" and "prompting a user to create a logical connection" with the subject matter of independent

claim 21. Furthermore, Applicant requests that the Examiner provide evidence to support the "Official Notice" that can be fairly applied in the context of the present claims.

Independent claim 38 recites a method for provisioning communication services offered by a service provider. None of the references applied by the Examiner are similar to independent claim 38. Furthermore, independent claim 38 is similar to the other independent claims 1 and 21 in that it relates to the provisioning of a particular service, and the case of claim 38 a particular communication channel, by a service provider where the communication channel is to be shared by first and second parties. The "Official Notice" referred to in connection with claim 4 is not clear, as discussed above, and does not overcome the deficiencies of Walker et al. and Teng et al.

Claims 40, 43 and 45-54 depend from claim 38, and are believed allowable for at least the same reasons as claim 38. Furthermore, these claims recite features discussed above providing independent reasons for patentability.

Concerning claim 40, the Examiner appears to apply two new separate pieces of allegedly well-known prior art, including "identifying a client, such as by an Internet cookie," "point-to-point, point-to-multipoint and multipoint to multipoint" channels. However, there is no suggestion of applying the process of the present claims to provisioning a shared communication service applying these techniques.

Regarding claim 43, the Examiner argues that because a metropolitan area network is well known, it would be obvious to apply the technique of claim 38 to such a network. Again, this is clear reliance on hindsight. The Examiner has no evidence to support this conclusion.

Likewise, regarding claims 45-52, applicant requests reconsideration of the reliance on Official Notice, for the reason discussed above with respect to claim 5, 6, 14 and so on.

As to claim 54, Applicant disagrees with the Examiner's reading of the Abstract of Walker et al. Walker et al. does not relate to an offering from a first party for use by other parties independent of the service provider, as stated by the Examiner. Rather, Walker et al. relates to aggregation of offers to purchase goods or services. The parties that are independent of the service provider, do not share any services described in Walker et al. Furthermore, claim 20 is about sharing information in the context of



establishing a shared service, as discussed above in connection with claim 20, and is believed allowable for at least the same reasons as claim 20.

Accordingly, reconsideration of the rejection of claims 22-26, 33-36, 38, 40, 43 and 45-54 is respectfully requested.

Rejection of Claim 39 under 35 USC 103(a)

The Examiner rejected claim 39 under 35 USC 103 (a) as unpatentable over Walker et al. in view of Teng et al., Official Notice and McMillen et al. (US Patent 4,630,258). Claim 39 depends from claim 38, and relates to inventive aspects of configuring a communication channel to be provisioned by the service provider according to the present invention. The Examiner relies on McMillen et al. to teach a communication switch for communications in which various parameters of communication channels are utilized. However, nothing in McMillen et al. relates to the provisioning of services as recited in the present claims. Accordingly, claim 39 is believed to be allowable for at least the same reasons as claim 38, and reconsideration is respectfully requested.

Rejection of Claims 41 and 44 under 35 USC 103(a)

The Examiner rejected claims 41 and 44 under 35 USC 103 (a) as unpatentable over Walker et al. in view of Teng et al., Official Notice and Husak (US Patent 6,157,647). Claims 41 and 44 depend from claim 40 and 43, respectively, and are allowable for at least the same reasons as their respective base claims. The Examiner relies on Husak to teach the use of MAC addresses and the like recited in these claims. However, Husak does not relate to the provisioning of services as required by the present claims, and does not overcome the deficiencies of the other references. Accordingly, reconsideration is respectfully requested.

Rejection of Claim 42 under 35 USC 103(a)

The Examiner rejected claim 42 under 35 USC 103 (a) as unpatentable over Walker et al. in view of Teng et al., Official Notice, McMillen and Husak (US Patent 6,157,647). Claim 42 depends from claim 39, and is allowable for at least the same

Application No. 09/634,566

CMET 1001-2

reasons. Furthermore, claim 42 recites the unique feature of applying MAC addresses and VLAN tags according to the process of the present invention. There is no suggestion in the prior art of record leading to claim 42, and reconsideration of the rejection is respectfully requested. Accordingly, reconsideration is respectfully requested.

### CONCLUSION

It is submitted that the present application is now in form for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (CMET 1001-2).

Respectfully submitted,

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